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3-26-04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:)
David M. Lee, et al) Conf. No.: 2187
U.S. Serial No: 10/040,702) Examiner: Shah, Chirag G
Filed: December 28, 2001) Art Unit: 2664
For: METHOD FOR HANDLING)
UNEXPECTED COMPLETION PACKETS)
AND COMPLETION PACKETS WITH A)
NON-SUCCESSFUL COMPLETION)
STATUS)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF
PETITION UNDER 37 C.F.R. §1.137(f)

Dear Sir:

The Applicants respectfully request and petition for reconsideration of the Petition filed under 37 C.F.R. §1.137(f) on May 20, 2003, that was dismissed on June 12, 2003. The petition was dismissed because the international filing date of a foreign filing referenced in the petition indicated that the foreign filing occurred before the filing of the above-referenced patent application. It is respectfully submitted that the previous petition under 37 C.F.R §1.137(f), mailed by the undersigned on May 20, 2003, had an incorrectly entered international filing date. The correct international filing date of the foreign application is December 6, 2002, which is after filing of the above-referenced

patent application. To clarify that December 6, 2002 is the correct foreign filing date, please find accompanying this petition the following documentation:

- 1. A copy of the Notification of the International Application Number and of the International Filing Date document with the correct international filing date of December 6, 2002, sent to the undersigned by the PCT.**

Furthermore, at the time of filing the original petition, Applicants believed that the above-identified application would be erroneously regarded as abandoned by the United States Patent and Trademark Office (PTO) because the PTO had misinterpreted the requirements of 35 U.S.C. §122, and respectfully requested a refund under 37 C.F.R. §1.26 for the fees under 37 C.F.R. §1.17(m) mistakenly required to be paid. This was due to the fact that Applicants mailed a Request to Rescind Previous Nonpublication Request document (35 U.S.C. §122(b)(2)(B)(ii)) to the PTO on February 13, 2002. This date was well before the correct international filing date of December 6, 2002, and thus Applicants believed complied with 35 U.S.C. §122 to the best of his ability. However, the PTO, for some unknown reason, did not receive the Request to Rescind Previous Nonpublication Request document until July 10, 2003, after the filing and dismissal of the petition to revive. The entire delay between mailing and receiving the Request to Rescind Previous Nonpublication Request was obviously unintentional on Applicant's part, as Applicant has no control over the United States Postal system.

To verify the above referenced dates please find accompanying this petition the following documentation:

2. **A copy of the Request to Rescind Previous Nonpublication Request document signed and dated February 11, 2002 with a certificate of mailing at the bottom of the document signed and dated February 13, 2002.**
3. **A copy of the return receipt postcard for the Request to Rescind Previous Nonpublication Request document. This postcard again displays the date mailed, February 13, 2002, and the date received by the USPTO, July 10, 2003.**

The signature on the certificate of mailing is that of my former secretary, Melanie Lyons, who left the firm in November of 2002.

Under 35 U.S.C. §122(b)(2)(B)(iii) “[a]n applicant who has made a request under clause (i) but who subsequently files, in a foreign country or under a multilateral international agreement specified in clause (i), an application directed to the invention disclosed in the application filed in the Patent and Trademark Office, shall notify the Director of such filing not later than 45 days after the date of the filing of such foreign or international application. A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, *unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional.*” [emphasis added] Under guidelines issued by the PTO, for purposes of 35 U.S.C. §122, Applicants apparently cannot rely on the certificate of mailing date for the Request to Rescind Previous Nonpublication Request document that was filed by Applicants that indicated that the date of the request for rescission of the non-publication


request was February 13, 2002. The actual date of receipt by the PTO of Applicant's Request to Rescind Previous Nonpublication Request document was not until July 10, 2003 and was likely due to the United States Postal Service. As Applicant respectfully submitted above, this delay was clearly an unintentional error.

Thus, applicant respectfully requests that enclosed Petition be accepted under 37 C.F.R. §1.137(f). If a telephone conference would facilitate the correction of this petition, the Examiner is invited to contact Michael J. Mallie at (408) 720-8300.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date: 3/18/04

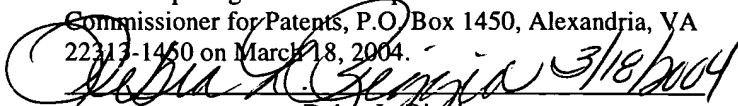


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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on March 18, 2004.



Debra L. Riggio